Filed 2/16/05 In re T.F. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.F. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. NATASHA F., Defendant and Appellant.	E036106 (Super.Ct.No. SWJ002367) **OPINION**

APPEAL from the Superior Court of Riverside County. Robert W. Nagby, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

William C. Katzenstein, County Counsel, and Julie Koons Jarvi, Deputy County Counsel for Plaintiff and Respondent.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Minors.

Defendant and appellant Natasha F. (Mother) is the mother of two young children, T.F. and C.F. Mother appeals the trial court's order terminating reunification services. Specifically, Mother contends (1) the juvenile court erred in finding that she had been provided with reasonable reunification services; (2) the juvenile court erred when it failed to place the children with their paternal grandmother; and (3) notice under the Indian Child Welfare Act (the ICWA) (25 U.S.C. § 1901 et seq.) was improper. We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

On February 27, 1999, the Riverside County Department of Public Social Services (DPSS) received a referral on behalf of then 16-year-old Mother, who was a victim of physical abuse and general neglect by her father. Mother's father had choked her and threatened to kill her. Due to the ongoing problems with substance abuse and violence, Mother stated that she wanted to kill herself before her father did it for her. Mother was thereafter placed in a psychiatric hospital.

In 1999, Mother had become a ward of the juvenile court after being arrested and charged with assault with a deadly weapon. She was placed on probation. In 2000, Mother completed probation.

On July 5, 2003, Mother was again involuntarily hospitalized in a psychiatric hospital after making suicidal threats. She informed a police officer that she wanted to kill herself or someone else and that she sold drugs, specifically methamphetamine, to support her two children, two-year-old T.F. and one-year-old C.F. A scale was found in

the home, and Mother had admitted to using the scale for drug sales. The children were in the home with Mother during this crisis. Mother thereafter contacted the maternal grandmother, who was a known drug addict, and asked her to take care of the children. On July 7, 2003, after the paternal grandmother learned that the children were in the care and custody of maternal grandmother, the paternal grandmother went to the maternal grandmother's home and took T.F.

On September 30, 2003, DPSS filed a Welfare and Institutions Code section 300[1] petition on behalf of the children based on Mother's history of mental illness and substance abuse and a history of substance abuse, physical abuse against Mother, and current incarceration by the children's father, Timothy H. (Father).

In a detention report dated October 1, 2003, the social worker reported that the ICWA did not apply, as the parents denied the family had any Indian heritage. Mother informed the social worker that the maternal grandparents were heavy substance abusers. She admitted to being hospitalized after feeling depressed and abusing marijuana, but she denied using methamphetamine or selling drugs. She also stated that Father, who had a chronic substance abuse problem and criminal history, had been arrested for using and selling methamphetamine. She further informed the social worker that she had been physically abused by her parents throughout her childhood, that her mother physically assaulted her after she refused to allow her mother to care for her children, and that the children were present throughout the domestic violence. Mother had been receiving individual counseling and medication for her mental illness at Hemet Mental Health.

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[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

After Mother had agreed to drug test, she tested positive for marijuana use. Mother also reported that, when she was 16, she had been charged with felony manslaughter for beating a girl.

Father had a criminal history involving drugs and domestic abuse. After Father was arrested for domestic violence and drug-related charges, he was sentenced to three years in state prison. Father stated that Mother was the victim of domestic violence by her parents and admitted to perpetrating domestic violence on Mother. He also admitted to being arrested several times for drug-related charges. He stated that he was willing to work on being a better parent and agreed to take classes while in prison to address his substance abuse and domestic violence issues.

The paternal grandmother informed the social worker that she did not tolerate violence in her home; that she had allowed the children and Mother to reside with her; and that she was unable to provide consistent care for the children, as she worked full time.

To prevent removal of the children from Mother's home, Mother had been referred to various programs in August 2003 and had been participating in the S.A.V.E. and MOMS programs. When the social worker discussed with Mother the importance in participating with these programs, Mother stated that she had been pulled out of her group sessions due to the children's behavioral problems. The social worker recommended that Mother read the parenting pamphlets, but Mother stated that "nothing appear[ed] to be working." The social worker observed that when Mother would set limits and boundaries with T.F., he would hit his mother, swear, yell, and scream until he got what he wanted. Mother had agreed that she was in need of parenting classes and

wanted help. Medical professionals reported that T.F. was aggressive, defiant, and out of control; was throwing objects, hitting his sister, swearing, and biting himself; and was a threat to himself and others. A therapist also noted that T.F. would have to be placed in a hospital if he continued his dangerous behavior and that he needed to be seen by Children's Mental Health Services. Mother appeared to be overwhelmed and agitated and failed to consistently utilize techniques and skills learned in services provided to her. She was irritated by constructive criticism. On September 25, 2003, Mother completed parenting classes; however, a staff member reported that she had observed Mother having difficulties redirecting T.F.'s out-of-control and defiant behavior.

Mother's medical reports showed that Mother had been diagnosed as bipolar mixed with psychosis, personality disorder, cannabis abuse, and antisocial personality disorder. The reports noted that Mother was easily agitated; had poor impulse control, mood swings, poor concentration, and a short attention span; was tense and anxious; and lacked positive reasoning and abstract skills. Mother felt that someone was watching her, that bad things were going to happen to her, and that bugs were crawling inside her stomach and on her skin. Mental health tests showed that Mother could live alone, be independent with self care and housekeeping, and work in a structured employment if expectations were consistent. However, the tests showed that it would not be safe for Mother to drive, operate power tools, or care for small children independently. Mental health professionals also reported that on July 6, 2003, Mother had become highly agitated, threw chairs, and threatened other patients verbally.

On September 26, 2003, a safety and risk assessment test was completed on Mother. This test showed that there were one or more safety factors present, and

placement was the only protection intervention possible for the children. Without removing the children from Mother's care, the children would likely be in danger of immediate harm. The children were thereafter taken into protective custody. At that time, the social worker noted that T.F. had marks and scratches on his face, back, and stomach. T.F. stated that the scratches on his face and stomach were from the family's cat and that the marks on his back came from Mother. Mother denied ever hitting or scratching T.F.

On September 28, 2003, Mother called the social worker to inquire about the children's well-being and informed the social worker that she wanted the paternal grandmother to have custody of T.F. and a maternal great-aunt custody of C.F.[2] The following day, the great-aunt called the social worker and stated that she would be willing to have C.F. placed in her care.

At the October 1, 2003, detention hearing, at which Mother was present, the court found a prima facie case had been established for detention of the children out of the home (§ 319, subd. (b)(1)) and denied Mother's request to have the children returned to her care. The court noted that there was a relative who was willing to take the children and ordered DPSS to assess relatives for placement. The court also ordered frequent and liberal supervised visits between the parents and the children as directed by DPSS but that the visits were to be denied if the parent appeared to be under the influence of alcohol or illegal drugs. The court further ordered reunification services to parents and

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[2] There is some indication in the record that this is a *paternal* great-aunt, but it appears from the totality of the record that it is, in fact, Mother's aunt.

allowed Mother to live with the caretaker upon the following conditions: Mother (1) was not to be left alone with the children; (2) was to take any and all prescribed medications; (3) was to be in compliance with her case plan; and (4) was to submit to random drug testing and test clean.

In a jurisdictional/dispositional report dated October 22, 2003, the social worker recommended that the court find the allegations in the petition true, that the children be declared dependents of the court, and that reunification services be provided to Mother and denied to Father pursuant to section 361.5, subdivision (e)(1). The social worker noted the ICWA "may apply" but that there was insufficient evidence to determine if it applied at that time. On October 14, 2003, Mother had reported that there might be maternal Indian heritage; however, she was unable to specify with what tribe she might be affiliate. Mother was to contact additional family members to gather more information regarding possible Indian heritage.

The social worker reported that on October 14, 2003, Mother had denied some of the allegations in the petition and stated that she did not recall making statements concerning her mental illness problems and her selling drugs. Mother had admitted the allegations regarding Father's drug abuse and domestic violence against her and claimed that Father was under the influence of methamphetamine when he struck her.

On October 15, 2003, Mother's psychiatrist, Dr. Elizabeth Leonard, reported that she had prescribed medication to deal with Mother's mental illness, that Mother had been compliant with her medication, and that Dr. Leonard had signed a letter indicating Mother's suitability to supervise young children.

T.F.'s foster mother reported that T.F., who was placed in her home on October 6, 2003, was aggressive and at times violent. However, the foster mother was able to quickly and easily redirect T.F.'s behavior, and he had made improvements.

As to services, Mother had stated that she was willing to comply with DPSS and had been referred to parenting classes and therapeutic behavioral services at the Children's Mental Health Clinic (CMHC), one-on-one parenting with therapist Debra McCormick at CMHC, the MOMS program at the Substance Abuse Clinic, drug testing, and regular psychiatric evaluations at the Department of Mental Health to ensure medication compliance and appropriateness. Once it appeared that Mother had the ability to have additional responsibility, Mother would be referred to individual counseling to address her anger management, domestic violence, depression, self-esteem, and childhood abuse issues. In summary, the social worker opined that Mother did possess the ability to *learn* how to effectively parent her children and to protect them from harm, if she remained drug free and adhered to her psychiatric medication. However, as of that date, Mother had not demonstrated that she *could* effectively parent the children, remain drug free, adhere to her medication, and understand the dynamics of domestic violence.

On October 22, 2003, an amended section 300 petition was filed, in which some of the minor allegations contained in the original petition were stricken. On that same date, the jurisdictional hearing was held, at which both parents and the maternal great-aunt and uncle were present. Both parents signed a waiver of rights form and submitted on the allegations in the amended petition. The court found the allegations in the amended petition true and that the children came within the provisions of section 300, subdivisions (b) and (g). The court then declared the children to be dependent children of the court,

maintained the children in the care and custody of DPSS, and ordered DPSS to provide the parents with reunification services. The court approved the parents' case plans and ordered them to participate in services. The court advised the parents that family reunification services would not exceed the statutory time line of six months and that a hearing pursuant to section 366.26 would be held if the children could not be returned to the parents. The court also ordered the social worker or foster parents to take the children to the jail facility for visits with Father and ordered the social worker to make arrangements for visits between Mother and the children at the program facility.

In a status review report dated April 22, 2004, the social worker reported that the ICWA did not apply; that the children had been placed with the maternal great-aunt in Whittier, California; that Mother had been residing with the paternal grandmother; and that Father had been incarcerated. Mother had been referred to programs as far back as August 2003. On October 16, 2003, DPSS had provided Mother with referrals to Narcotics Anonymous (NA), MFI Recovery Center, White Side Manor Women's Program, Prototype Substance Abuse Program, Riverside County Substance Abuse Program, and Alternative to Domestic Violence (ADV). However, there was no evidence that she had participated in the programs. On November 18, 2003, Mother had again been referred to the Riverside Substance Abuse Program, but she never enrolled. On February 26, 2004, Mother had again been provided with referrals to various programs; only as of March 29, 2004, had Mother started participating in the Riverside Substance Abuse Program. In addition, Mother had failed to randomly drug test or comply with her medication, and she had left her mental health program; however, she had completed a parenting class.

The social worker also noted that there had been problems with visitation since the children had been placed with the maternal great-aunt. In December 2003, Mother had reported that her aunt was not allowing her to visit with the children. The social worker then had reinstructed the aunt about the importance of the mother and children having visits. In March 2004, Mother had again noted that she had made efforts to see her children, but the aunt denied the visits. During a visit with the aunt on March 29, 2004, the social worker had discussed the issue of visitation between Mother and her children and again had reinstructed the aunt about the importance of visitation. However, at the end of the discussion, the aunt had requested that the children be removed from her home, and a search for a new home for the children had begun.

The social worker opined that while Mother had made some progress on her case plan, a delay in beginning her programs indicated that she had no real insight into the issues that brought her to the attention of DPSS and the court. Mother had not dealt with her extensive drug habit, domestic violence issues, and mental health issues. She had yet to complete a domestic violence program, mental health services, and a substance abuse program. She was not medication compliant, and she had failed to randomly drug test. The social worker therefore opined that in the best interests of the children, reunification services should be terminated for both parents and a section 366.26 hearing be set.

At the April 22, 2004, review hearing, Mother requested the hearing be set contested, and the matter was continued. At that time, the court also ordered DPSS to reassess the paternal grandmother's home for placement.

In an addendum report dated May 20, 2004, the social worker reported that the children had been placed in a confidential foster home in Murrieta, California. The social

worker also noted that at the April 22, 2004, hearing Mother had provided the court with various documents, including a report from the Hemet Substance Abuse program, which indicated that Mother had "successfully completed parenting, domestic violence, and anger management classes." The Hemet Substance Abuse report, however, contained many inaccuracies and impossibilities. When the social worker checked with that facility, it was confirmed that on March 22, 2004, Mother had tested positive for methamphetamine; that she had actually participated in eight group sessions and only two face-to-face counseling sessions; and that she had four excused absences and four unexcused absences. A corrected report from the Hemet Substance Abuse program dated May 14, 2004, indicated that the report dated April 21, 2004, which Mother had provided to the court, had been altered to represent a false picture.[3] Despite this, the social worker had recommended providing Mother with an additional six months of reunification services.

On May 20, 2004, the court granted Father's request to continue the contested review hearing so that Father could be transported from prison. At that time, the court also notified the parties that it had intended to terminate services as to both parents.

In an addendum report dated June 17, 2004, the social worker recommended reunification services to the parents be terminated and that a section 366.26 hearing be set. The social worker reported that there had been a disruption in visitation due to

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[3] The report Mother had presented to the court showed that Mother had started the program on March 9, 2004, and by April 22, 2004, she had 22 negative drug test results and had participated in eight group sessions and three face-to-face counseling sessions.

Mother's homelessness and lack of communication with DPSS, but after the children were removed from the aunt's home on April 26, 2004, Mother had been visiting them weekly. The social worker also noted that although Mother had complained that her aunt did not allow her to visit her children during December 2003, when the social worker spoke with Mother on January 12, 2004, Mother failed to inform the social worker there had been problems with visits. In addition, the aunt informed the social worker on January 28 and February 25, 2004, that Mother was homeless, as the paternal grandmother had thrown her out of her home due to the men with whom Mother was involved. She also reported that Mother had not been visiting the children.

The social worker also reported that Mother was terminated from the Hemet Substance Abuse Program and that her last day in the program was April 12, 2004. The social worker opined that Mother had lost her determination to regain custody of her children as evidenced by her lack of participation in the programs offered, that Mother had failed to show that she could live a clean and sober lifestyle, and that the best interests of the children would by served by terminating reunification services as to both parents.

On June 17, 2004, the court held the contested six month review hearing, at which Mother was present but Father was not. Counsel for DPSS recommended terminating reunification services as to Mother but continuing them as to Father. After counsel for DPSS, Father, and the minors submitted on the social worker's reports, Mother's stipulated testimony was read into the record. Mother's counsel reported that if Mother was called to testify she would testify: that she informed the social worker on February 26, 2004, that she was prevented from visiting her children by the aunt; that she called the

social worker on two occasions during February to inform the social worker that she was not being allowed to visit with her children; that the first time she saw her children since December 2003 was after the court date on April 22, 2004; and that she had not seen her children from December 2003 until the week of April 22, 2004. Thereafter, Mother's counsel requested an additional six months of services, arguing that the services were not reasonable based on Mother not being allowed consistent visits and contact with her children as a result of the social worker failing to do "anything" (i.e., picking up the children from the aunt's home and bringing them to DPSS) other than reinstructing the aunt.

Counsel for DPSS argued that the social worker did as much as he could to alleviate the visitation problem and that Mother had done "very little, if anything," in her case plan. Specifically, Mother had been discharged from her drug treatment program; she had not drug tested as requested by the social worker; she had unstable housing by her own admission; and she had submitted fraudulent documents to the court. Counsel maintained that reasonable services had been offered to Mother and that there was no substantial probability that the children would be returned to Mother if an additional six months of services were allowed.

The court found that notice had been given as required by law; that by a preponderance of the evidence, return of the children to the custody of Mother would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the children; and that the children's continued placement remained necessary. The court also found by clear and convincing evidence that reasonable services had been provided to Mother but that Mother failed to regularly participate or

comply with her court-ordered treatment plan.[4] The court explained that as to visitation, the social worker acted on the problem with visitation immediately once he was notified in December 2003; after he informed the aunt of the importance of visitation, Mother did not indicate there was a problem with visitation between December 2003 and February 2004; when the social worker again learned there was a problem with visitation in February and March 2004, he again immediately spoke with the aunt both times. The court noted that in viewing the totality of the testimony with regard to the issue of visitation, visitation had been occurring, but for some reason it was disrupted; that DPSS had acted reasonably in attempting to resolve the issue; and that from December 2003 to February 2004 the social worker had no reason to believe that the visits were not taking place. The court further found that there was no substantial probability that the children would be returned to Mother's care if given an additional six months based on Mother's deception to the court, her failure to participate in the programs offered to her, and her failure to address her substance abuse problem. The court terminated reunification services to Mother but continued to provide her with visitation.

Before the proceedings ended, Mother's counsel informed the court that the paternal grandmother was available for placement of the children, that the social worker was working on that as a possibility, and that Mother was in agreement with that placement. The court replied, "It sounds like it's well on its way then."

On June 21, 2004, Mother filed her notice of appeal.

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[4] As to Father, the court found that reasonable services had not been offered to Father because there was no evidence that Father, while incarcerated, had been provided with visitation and referrals to programs.

II

DISCUSSION

A. *Reasonableness of Reunification Services*

Mother contends she was not provided with reasonable reunification services, primarily because the she was prevented from visiting the children. She therefore claims reunification services should have been extended for an additional six months. We disagree.

Initially, we note that Mother waived this claim on appeal by failing to object below when the issue of visitation first arose in December 2003. "Many dependency cases have held that a parent's failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court. [Citations.] As some of these courts have noted, any other rule would permit a party to trifle with the courts. The party could deliberately stand by in silence and thereby permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable. [Citations.]" (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339; see also *In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.) This policy applies full force to the instant case, as the court was not put on notice that reunification services were inadequate or that DPSS and the aunt were not complying with the court's visitation order, even though Mother had ample opportunity to make such an objection. As minors' counsel points out, if the court had known about the visitation problem and the social worker's purported inadequate steps to alleviate the problem when the issue first surfaced, it could have been expeditiously resolved early on. Instead, Mother waited

until the contested six-month hearing in June 2004 to air her problems with visitation to the court.

The record also shows that Mother was well aware of the requirements of her reunification plan and failed to advise there were problems complying with it. As our colleagues in Division One stated in *In re Christina L.* (1992) 3 Cal.App.4th 404, "If Mother felt during the reunification period that the services offered her were inadequate, she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan: '"The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal." [Citation.]' [Citation.]" (*Id*. at p. 416.) Thus, Mother's attempt to challenge the adequacy of reunification services is an attempt to raise a new issue which was not presented to the juvenile court. We find the issue waived, and we need not consider it further. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846 [" . . . '[a] party is precluded from urging on appeal any point not raised in the [juvenile] court'"].)

Even assuming Mother preserved this issue for appeal, we would find that reunification services to Mother were reasonable.

We review the correctness of an order pursuant to section 366.21 to determine if it is supported by substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) That standard requires us to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) In reviewing the

reasonableness of the reunification services, we recognize that in most cases more services might have been provided, and the services provided are often imperfect. The standard is not whether the services provided were the best that might have been provided but whether they were reasonable under the circumstances. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) A court-ordered reunification plan must be tailored to fit the circumstances of each family and designed to eliminate the conditions that led to the juvenile court's jurisdictional finding. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

The record in this case, set out above, reveals the services offered were reasonable -- they were tailored to fit the circumstances and to eliminate the conditions that led to the juvenile court's jurisdictional finding -- and Mother consented to them. From the inception of this case, the social worker took into consideration Mother's domestic violence, substance abuse, and mental health issues and tailored the service plan accordingly. To prevent removal of the children from Mother's home, Mother had been referred to various programs in August 2003 and said that she was willing to comply with DPSS. Mother had been referred to the Riverside Substance Abuse Program on August 4, 2003; however, she had 10 unexcused absences and left that program. Mother had also been referred to parenting classes and therapeutic behavioral services at CMHC, one-on-one parenting with therapist Debra McCormick at CMHC, the S.A.V.E. and MOMS programs at the Riverside Substance Abuse Clinic, drug testing, and regular psychiatric evaluations at the Department of Mental Health to ensure medication compliance and appropriateness.

Thereafter, on October 16, 2003, DPSS had provided Mother with referrals to NA, MFI Recovery Center, White Side Manor Women's Program, Prototype Substance Abuse Program, Riverside Substance Abuse Program, and ADV. However, Mother had not participated in any of these programs. On November 18, 2003, Mother had again been referred to the Riverside Substance Abuse Program, but she never enrolled. On February 26, 2004, Mother had again been provided with referrals to various programs. In addition, Mother had refused to randomly drug test and comply with her medication. She also left her mental health program. A counseling referral was unable to be provided because the parent must have drug tested clean prior to a referral being made, and Mother had tested positive for methamphetamine on March 22, 2004. Mother had also been provided with bus passes. After seven months of continually being provided with referrals to various programs, Mother was only able to complete a parenting program. Although Mother had eventually enrolled at the Riverside Substance Abuse Program on March 29, 2004, she had subsequently been terminated from the program. In addition, Mother had provided an altered report from her substance abuse program stating that she was more compliant than she was in reality. The social worker had met with Mother many times, and each time Mother had essentially admitted that her service plan required her to complete a domestic violence program; mental health services; psychotropic medication, evaluation, and monitoring; a substance abuse program; and counseling and to submit to random drug testing.

As to visitation, it was originally conducted at the Hemet DPSS office when the children were placed in foster care. Problems with visitation began to occur after the children were placed with the maternal great-aunt in December 2003. After Mother

reported to the social worker in December 2003 that the aunt was not allowing visitation to occur, the social worker immediately instructed the aunt about the importance of visitation and "redirected" the aunt. When the social worker spoke with Mother on January 12, 2004, Mother did not indicate that there were any problems with visitation. Visitation also did not occur for a period of time while the children were residing with the aunt because Mother was homeless; indeed, when the social worker spoke with the aunt on January 28 and February 25, 2004, the aunt stated that visitation did not occur because Mother was homeless, and her whereabouts were unknown.

Mother did not again notify the social worker about the problems with visitation until February 26, 2004, at which time the social worker told Mother to document the problems in writing so that the issue could be addressed with the aunt. In March 2004, Mother documented the problems she had with visitation and the efforts she had made to visit and contact the children while they were with the aunt. Thereafter, on March 29, 2004, the social worker again instructed the aunt regarding the importance of visitation; however, the aunt responded by requesting that the children be removed from her home. Under the circumstances, we believe DPSS or the social worker acted reasonably in fostering visits between Mother and the children and that the social worker took steps to ensure that visitation occurred.

Contrary to Mother's claim, substantial evidence reveals that reasonable reunification services were offered to her. Further, the services offered were reasonably geared to overcoming the problems that caused the dependency and were appropriate under the circumstances. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 424-425; *In re Christina L.* (1992) 3 Cal.App.4th 404, 417.) The problem is not that inadequate services

were offered or that Mother had not been provided with adequate visitation, but that Mother failed to take advantage of the services.

Mother's reliance on *In re Daniel G.* (1994) 25 Cal.App.4th 1205 is misplaced. In *Daniel G.*, the juvenile court ordered reunification services to the mother at the dispositional hearing, and the Los Angeles County Department of Children's Services failed to provide them. At the 18-month review hearing, the court found the department had not provided reasonable reunification services to the mother; nevertheless, the court terminated reunification services. (*Id.* at pp. 1209, 1216.) The appellate court found that the juvenile court had the discretion to extend services past the 18-month review hearing and that its failure to exercise that discretion required reversal. (*Ibid*.) *Daniel G.* is distinguishable from the instant case. The juvenile court here found that Mother was provided with reasonable reunification services. Indeed, Mother received about nine months of reunification services and was offered an array of services. It is clear that the social worker here provided Mother with many services, unlike the social worker in *Daniel G.*, who had done little or nothing for the mother, and that Mother had services available to her.

Furthermore, issues regarding visitation alone are not enough where a parent has failed to address the problems that led to the removal of the children. (*In re Brian R.* (1991) 2 Cal.App.4th 904, 924.) Mother failed to take advantage of any of the programs offered to her. Reunification services are not inadequate simply because the parent is indifferent or unwilling to participate. (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) Substantial evidence in this case shows Mother was offered an array of services that were reasonable and appropriate. (See *In re Jasmon O.*, *supra*, 8 Cal.4th 398, 424-

425.) Viewing the evidence in the light most favorable to DPSS, we find that the services provided to Mother were reasonable under the circumstances of this case.

Mother also claims the juvenile court erred in not extending reunification services for an additional six months. We find that the juvenile court did not abuse its discretion in terminating reunification services.

Section 361.5, subdivision (a) provides, in pertinent part: "For a child who, on the date of initial removal from the physical custody of his or her parent . . . , was under the age of three years, court-ordered services may not exceed a period of six months from the date the child entered foster care. . . . [¶] . . . [¶] [C]ourt-ordered services may be extended . . . not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent . . . . The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . within the extended time period or that reasonable services have not been provided to the parent . . . ."

Based on a child's need for security and stability, the Legislature has set the 18-month review hearing as the cutoff date for family reunification services. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1788.) "At this hearing, the court must return children to their parents and thereby achieve the goal of family preservation or terminate services and proceed to devising a permanent plan for the children." (*Ibid.*, citing § 366.22.)

In the present matter, as explained above, Mother was provided with reasonable reunification services during the nine months of services. Furthermore, no extraordinary circumstance is presented here. (See, e.g., *In re Barbara P.* (1994) 30 Cal.App.4th 926,

932-933; *In re David D.* (1994) 28 Cal.App.4th 941, 954, fn. 8; *In re Daniel G.*, *supra*, 25 Cal.App.4th 1205, 1212-1214; *In re Dino E.*, *supra*, 6 Cal.App.4th 1768, 1777-1778.) Furthermore, the record clearly shows that there was an insufficient probability that the children would be returned to the physical custody of Mother and safely maintained in her home if they were allowed an additional six months of reunification services. (§ 366.21, subd. (g)(1).)

Thus, we find neither exceptional circumstances nor any substantial evidence in the present case which support continuation of reunification services. (Cf. *In re Elizabeth R.*, *supra*, 35 Cal.App.4th 1774, 1777-1778; *In re Daniel G.*, *supra*, 25 Cal.App.4th 1205, 1209.) Accordingly, the juvenile court did not err in terminating reunification services to Mother.

B. *Court's Failure to Place the Children with the Paternal Grandmother*

Mother next claims that the juvenile court erred when it failed to place the children with the paternal grandmother. However, this issue now appears to be moot, as the children are currently living with their paternal grandmother.[5]

"It is well settled that an appellate court will decide only actual controversies. Consistent therewith, it has been said that an action which originally was based upon a

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[5] In her supplemental brief, mother asks this court to reconsider the denial of minors' request to file additional evidence as it relates to the placement issue. The additional evidence consists of a declaration by minors' counsel that indicates the children have been placed with the paternal grandmother. Mother argues that if this additional evidence is not taken, then this court is forced to rule on the issue as it was pending at trial. However, we are not considering additional evidence for the purposes of the appeal, but merely as to the issue of mootness. Therefore, there is no need to reconsider the denial of minors' request to file additional evidence.

justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events." (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10; see also *Consolidated Vultee Air. Corp. v. United Automobile* (1946) 27 Cal.2d 859, 863.) An issue is not moot if the purported error infects the outcome of subsequent proceedings. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548; *In re Hirenia C.* (1993) 18 Cal.App.4th 504, 518; *In re Michelle M.* (1992) 8 Cal.App.4th 326, 329.) The question of mootness must be decided on a case-by-case basis. (*Joshua C.*, at p. 1547; *Hirenia C.*, at pp. 517-518.)

Here, as mother acknowledges, following mother's filing of this appeal, the children were subsequently placed with their paternal grandmother. Thus, the placement finding mother challenges in this appeal no longer adversely affects her, contrary to mother's assertion. We cannot grant mother any effectual relief, and the claimed error will not continue to affect the action or the outcome of the subsequent proceedings. (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 192-193; *In re Michelle M.*, *supra*, 8 Cal.App.4th 326, 329.)

Furthermore, an appeal is moot and will be dismissed when no effective relief can be granted. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315.) In *In re Brandon M.* (1997) 54 Cal.App.4th 1387, the mother appealed an order placing her son with her former husband for a 90-day trial period. The *Brandon* court dismissed the appeal because the 90-day trial visitation had already taken place, and "any issue relating to the propriety of such an idea is now patently moot." (*Id.* at p. 1401.) Here, the circumstances are such that this court is unable to provide a remedy that will reverse or

remedy any error the juvenile court made by not placing the children with the paternal grandmother.

Mother, however, claims the issue is not moot "because the issue regarding relative placement was [that] the trial court erred by not independently evaluating the relative placement and instead permitting the social worker to do that task." Even if *this* particular claim was not moot, we find the record does not support mother's claim that the juvenile court failed to exercise its independent judgment concerning relative placement.

C. *The ICWA*

Lastly, Mother contends, and minors' counsel agrees, that notice under the ICWA was improper as DPSS failed to investigate whether or not the ICWA applied. She therefore argues the matter should be reversed and remanded. We cannot agree.

"'The stated purpose of the ICWA is to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster care or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." [Citation.]' [Citation.]" (*In re Suzanna L.* (2002) 104 Cal.App.4th 223, 229 [Fourth Dist., Div. Two], quoting *In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1299; see also 25 U.S.C. § 1902; *Mississippi Band ofChoctaw Indians v. Holyfield* (1989) 490 U.S. 30; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) A violation of the ICWA's provisions can invalidate an order terminating parental rights. (25 U.S.C. § 1914; see also *Dwayne P. v. Superior Court*

(2002) 103 Cal.App.4th 247, 260 [the ICWA "renders voidable *any* action . . . taken without the requisite notice"].)

The significant provision of the ICWA for our purposes is the notice provision. (25 U.S.C. § 1912(a).) It states: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify . . . the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of . . . the tribe cannot be determined, such notice shall be given to the Secretary [of the Interior] in like manner, who shall have fifteen days after receipt to provide the requisite notice to . . . the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by . . . the tribe or the Secretary. . . ." (*Ibid*.; see also 25 U.S.C. § 1903(11).)

Rule 1439 of the California Rules of Court (rule 1439) is designed to ensure compliance with the ICWA. It provides that "if . . . the court has reason to know the child may be an Indian child, the court shall proceed as if the child is an Indian child. . . . " (Rule 1439(e).) It further provides that the court has reason to know the child may be an Indian child if, among other things, "[a] party . . . informs the court or the welfare agency or provides information suggesting that the child is an Indian child . . . . (Rule 1439(d)(2)(A).)

"The circumstances under which a juvenile court has reason to believe that a child is an Indian child include, but are not limited to, the following: '(i) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that

the child is an Indian child. [¶] (ii) Any public or state-licensed agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child. [¶] (iii) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child. [¶] (iv) The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community. [¶] (v) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.' (Guidelines for State Courts; Indian Child Custody Proceedings (44 Fed.Reg. 67584, 67586 (Nov. 26, 1979)) . . . ; rule 1439(d)(2).)" (*In re O.K.* (2003) 106 Cal.App.4th 152, 156.)

The ICWA defines an "Indian child" as a child who is either (1) "a member of an Indian tribe" or (2) "eligible for membership in an Indian tribe and . . . the biological child of a member of an Indian tribe . . . ." (25 U.S.C. § 1903(4).) Conversely, if the child is not a tribe member, and the mother and the biological father are not tribe members, the child simply is not an Indian child.

Nevertheless, the courts of this state have held that a duty to give notice can arise even in the absence of evidence that the child or a parent is a tribe member. (See *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1406-1407; *Dwayne P. v. Superior Court*, *supra*, 103 Cal.App.4th 247, 254; *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1425.) Their reasoning is essentially twofold. First, a parent legitimately may not know if he or she is a tribe member. (*Dwayne P.*, at p. 257; *In re Kahlen W.*, at p. 1425.) "'Formal membership requirements differ from tribe to tribe, as does each tribe's method of keeping track of its own membership. [Citation.]' [Citation.]" (*Dwayne P.*, at p. 255,

quoting *In re Santos Y.*, *supra*, 92 Cal.App.4th at p. 1300.) Second, each tribe has the sole authority to determine its own membership. (Rule 1439(g); *Dwayne P.*, at p. 255.) Indeed, one of the purposes of giving notice is to allow the tribe to determine whether the child is, in fact, an Indian child. (*Dwayne P.*, at pp. 254-255; *In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.) Thus, there is a concern lest the trial court usurp the tribe's authority.

Mother's argument here is that her statement that there "may be maternal Indian heritage" was sufficient to trigger the notice requirement, or at least that DPSS should have conducted an investigation to determine whether or not the ICWA applied. However, Mother and Father initially denied Indian heritage. Later, although Mother stated that there "may be maternal Indian heritage," she was unable to specify with what tribe she might be affiliated. The social worker therefore asked Mother to contact additional family members to gather more information regarding possible Indian heritage and reported in the jurisdiction/dispositional report that the ICWA may apply. In a status review report dated April 22, 2004, the social worker subsequently reported that the ICWA did not apply.

We find that Mother's statements gave the juvenile court no reason to think the children were of Indian heritage. While a child's Indian status need not be certain to trigger the ICWA's notice requirements, vague speculation does not suffice. Under rule 1439, there is a duty to give notice if a party "provides information suggesting that the child is an Indian child . . . ." (Rule 1439(d)(2)(A).) Notably, it does not say "suggests"; it says "provides information suggesting. . . ." This implies that some minimal level of informative content, beyond a bare suggestion, is required.

For example, in *In re O.K.*, *supra*, 106 Cal.App.4th 152, the mother told a social worker that she "may have Indian ancestry" but was unable to provide information regarding her family history or tribal affiliation. The Department then sent notice to the Bureau of Indian Affairs (the BIA). (*Id*. at p. 154.) The BIA responded that there was insufficient identifying tribal information. (*Ibid*.) Later, at the section 366.26 hearing, the paternal grandmother, who was not an enrolled member of a tribe and did not know whether she or her son were eligible for enrollment, offered for the first time that her son "may have Indian in him." (*Id*. at pp. 154-155.) The paternal grandmother was unable to identify a tribe and apparently based her comments on the fact the family was from an area where Native Americans lived; specifically, she told the trial court, "I don't know my family history that much, but where were [*sic*] from it is that section so I don't know about checking that." (*Id*. at p. 155.) The father made no comment regarding Indian heritage. (*Ibid*.) The Court of Appeal held that this was "insufficient to give the court reason to believe that the minors might be Indian children. The information . . . was not based on any known Indian ancestors but on the nebulous assertion that 'where were [*sic*] from is that section . . . .' This information was too vague and speculative to give the juvenile court any reason to believe the minors might be Indian children." (*Id*. at p. 157.) "The other cases relied on by appellants are distinguishable in that they involved information that a parent, or an immediate relative of the minor, was a member or might be eligible for membership in a tribe. [Citations.]" (*Ibid*.) "[I]t was not the paternal grandmother's failure to specify a tribal affiliation that rendered the information insufficient but her failure to assert any information that would reasonably suggest that the minors had any known Indian heritage." (*Id*. at p. 158.)

Likewise, here, Mother merely said that "there may be maternal Indian heritage." However, she was unable to specify with what tribe she might be affiliated, and she never responded to the social worker's request to gather more information regarding possible Indian heritage. Moreover, Mother and Father initially denied Indian heritage. There was no reason to think her statement was based on any known Indian ancestor or, indeed, on anything at all. The juvenile court had no principled way to prefer her statement that she might have Indian heritage over her statement that she did not.

We conclude that the trial court had no reason to know that the children were or even might be Indian child within the meaning of the ICWA. Accordingly, it could properly proceed even though no notice had been given (directly or through the Secretary of the Interior) to any Indian tribes.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

KING
J.